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22 **UNITED STATES DISTRICT COURT**
23 **FOR THE DISTRICT OF NORTHERN CALIFORNIA**
24 **SAN JOSE DIVISION**

25 IN RE: LENOVO ADWARE LITIGATION

26 Case No. 5:15-md-02624-RMW

27 This Document Relates to All Cases

28 THE STERLING PLAINTIFFS' RESPONSIVE
MEMORANDUM IN FURTHER SUPPORT OF
THEIR MOTION FOR APPOINTMENT OF
INTERIM CLASS COUNSEL

Date: July 17, 2015
Time: 9:00 a.m.
Courtroom: 6, 4th Floor
Judge: Hon. Ronald M. Whyte

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1 **I. INTRODUCTION**

2 The Sterling Plaintiffs, with the support of the great majority of plaintiffs and counsel who make
 3 up this MDL litigation, have moved for appointment of Cotchett, Pitre, & McCarthy LLP, Girard Gibbs
 4 LLP, and Pritzker Levine LLP as interim co-lead class counsel. *See* Dkt. No. 5.¹ Three other competing
 5 motions were filed. *See* Dkt. Nos. 3, 6 and 14. Without question, moving counsel are all capable and
 6 accomplished advocates. But the Sterling Plaintiffs' Counsel have the combination of skills and
 7 experience that best qualify them to represent the interests of the class.

8 The Court's June 26, 2015 Case Management Order sets forth the principal criteria that the Court
 9 will apply to appoint lead counsel:

10 a. willingness and availability to commit to a time-consuming project;
 11 b. ability to work cooperatively with others;
 12 c. qualifications, including experience in managing complex litigation and knowledge of the
 subject matter;
 13 d. efforts in researching and investigating the claims before the court;
 14 e. resources that can be contributed to the litigation; and
 15 f. ability to maintain reasonable fees and expenses.

16 Dkt. No. 8 at 7. Application of these six factors, which include the criteria provided under Fed. R. Civ.
 17 P. 23(g), support appointment of the Sterling Plaintiffs' Counsel.² Certain of these requirements -
 18 willingness and availability, general experience in managing complex litigation, and resources - are
 19 likely fulfilled by each of the counsel seeking appointment, simply by virtue of the experience level of
 20 the firms competing for a leadership position in this MDL. The Sterling Plaintiffs respectfully submit
 21 that the remaining criteria distinguish their counsel as the best choice for appointment because (1)
 22 Sterling Plaintiffs' Counsel are the only movants to have demonstrated their ability to work
 23 cooperatively with the other plaintiffs involved in the MDL, as well as the defendants, (2) they are
 24 exceptionally experienced and well qualified to prepare and try a consumer protection case in this

25
 26 ¹ The facts discussed in this brief are supported by the declarations of Jonathan K. Levine , Daniel C.
 27 Girard, and Matthew K. Edling in support of the Sterling Plaintiffs' motion for appointment of interim
 class counsel, Dkt. Nos. 5-1, 5-2, and 5-3.

28 ² The Sterling Plaintiffs' Counsel complied with the Case Management Order's requirement to meet
 and confer with other movants regarding appointment of class counsel, but were unable to resolve the
 issue informally.

1 district, (3) they have developed a thorough knowledge of the underlying facts of this case and the
 2 potential legal claims, positioning them to move the litigation forward in a measured and efficient
 3 manner, and (4) Sterling Plaintiffs' Counsel are in a superior position, based on their experience in
 4 similar cases and their location in this District, to maintain reasonable fees and expenses throughout the
 5 course of the litigation.

6 The Sterling Plaintiffs therefore request that the Court deny the motions by the Pick Plaintiffs (to
 7 appoint Robbins Geller Rudman & Dowd LLP and Edelson PC), Plaintiff Babbitt (to appoint the Joseph
 8 Saveri Law Firm, Inc.), and the Wood Plaintiffs (to appoint Van Laningham Duncan PLLC and Block &
 9 Leviton LLP), and grant their motion to appoint Cotchett Pitre, Girard Gibbs, and Pritzker Levine as
 10 interim co-lead class counsel.

11 **II. ARGUMENT**

12 **A. Willingness and Ability to Commit to a Time Consuming Project**

13 As detailed in the Sterling Plaintiffs' opening papers, Sterling Plaintiffs' Counsel have the
 14 resources and ability to litigate this case. The firms have been actively involved in the case since its
 15 inception and have assembled a primary team of attorneys who will bring specific skills and experience
 16 to prosecuting class claims. The firms regularly advance the cost of litigation, are well established,
 17 reputable, and have a successful track record of managing complex, resource-intensive cases. *See*
 18 *generally*, Dkt. Nos. 5-1, 5-2, and 5-3 (declarations in support of Sterling Plaintiffs' motion for
 19 appointment of interim class counsel).

20 Sterling Plaintiffs' Counsel's qualifications are discussed in more detail in Section C. below.

21 **B. Ability to Work Cooperatively**

22 The other counsel seeking appointment may well have the willingness and ability to commit to a
 23 time consuming project. But only the Sterling Plaintiffs' Counsel have demonstrated their ability to
 24 work cooperatively with the other plaintiffs and the defendants involved in this MDL, which weighs in
 25 favor of their appointment. *See e.g. In re Air Cargo Shipping Servs. Antitrust Litig.*, 240 F.R.D. 56, 58
 26 (E.D.N.Y. 2006) ("that large numbers of experienced counsel are satisfied to be represented" by the
 27 applicants for class counsel is a "measure of the respect they command and the confidence of their peers
 28 that they will serve well in the role"); *Smith v. State Farm Mut. Auto. Ins. Co.*, 301 F.R.D. 284, 290

1 (N.D. Ill. 2014) (appointing interim counsel who had a “demonstrated ability to work cooperatively with
 2 additional counsel” and noting that the majority of additional counsel supported the appointment). The
 3 great majority of plaintiffs (84 of the 104 plaintiffs in 19 of the 27 actions) support Sterling Plaintiffs’
 4 Counsels’ appointment. This support reflects Sterling Plaintiffs’ Counsels’ early and continuing
 5 coordination with the other plaintiffs to share resources and streamline efforts.

6 Sterling Plaintiffs’ Counsel have worked with the other plaintiffs’ counsel to (1) investigate facts
 7 and research legal theories for an anticipated amended complaint, (2) file motions and stipulations to
 8 relate subsequently-filed cases to the *Sterling* action, (3) file a joint opposition to defendants’ motion to
 9 stay, and (4) reach a consensus on advocating for transfer to this Court, including drafting a joint
 10 opposition to the motion to transfer the litigation to the Eastern District of North Carolina, and arguing
 11 before the JPML. The Sterling Plaintiffs’ Counsel were successful in this coordination because they
 12 have many years of experience in complex litigation, have worked cooperatively with most of the firms
 13 appearing in the case, and have dealt openly and in good faith with other plaintiffs’ counsel.

14 Sterling Plaintiffs’ Counsel have distinguished themselves in this matter and in other complex
 15 cases by developing and maintaining productive working relationships with other firms, and their efforts
 16 in this case have earned them broad support. By contrast, the other movants’ counsel have each
 17 garnered little or no support among the plaintiffs for their appointment as interim class counsel because
 18 they either have failed to advance the litigation for the benefit of the class or have engaged in conduct
 19 that was contrary to the consensus reached by the plaintiffs’ group or never shared with the group in the
 20 first instance.

21 **C. Qualifications and Knowledge of Subject Matter**

22 The Sterling Plaintiffs’ Counsel are experienced in complex litigation, and specifically in
 23 litigating privacy and consumer protections claims against emerging technology companies. *See*
 24 *generally*, Dkt. Nos. 5-1, 5-2, and 5-3 (declarations in support of Sterling Plaintiffs’ motion for
 25 appointment of interim class counsel). Their experience is superior to that of competing counsel.

26 The Cotchett firm and the attorneys who will litigate this action have extensive consumer class
 27 action litigation and trial experience, including actions which have asserted some of the same claims at
 28 issue here – California Unfair Competition Law, the California Invasion of Privacy Act, and the

1 Computer Fraud and Abuse Act. The firm and the attorneys who will primarily be responsible for this
 2 action frequently practice before the federal courts of this District and have led or currently lead MDL
 3 class actions on behalf consumers harmed by technology companies nationally and within this District.
 4 *See generally*, Dkt. No. 5-3. The National Law Journal named Cotchett Pitre to its inaugural list of Elite
 5 Trial Lawyers. The Daily Journal, California's leading legal publication, has named Cotchett Pitre one
 6 of the top law firms in Northern California—the only plaintiffs' class action firm so named. Further,
 7 Cotchett Pitre attorneys, including those who will be primarily responsible for this action (Steven
 8 Williams and Matthew Edling), have received awards for their successful trial representation of
 9 consumers from the leading consumer organizations nationally (Public Justice) and in California
 10 (Consumer Attorneys of California).

11 Girard Gibbs LLP will staff this matter with attorneys who are up to speed on the cutting edge
 12 issues in privacy litigation and complex litigation. Daniel Girard currently serves as lead counsel in *In*
 13 *re Yahoo! Mail Litigation*, N.D. Cal. Case No. 5:13-cv-4980-LHK, and serves as a member of the
 14 leadership team in several pending privacy cases, including *In re Target Corp. Customer Data Security*
 15 *Breach Litigation*, D. Minn. Case No. 0:14-md-02522-PAM, *In re The Home Depot, Inc., Customer*
 16 *Data Security Breach Litigation*, N.D. Ga. Case No. 1:14-md-02583-TWT, and *Corona v. Sony Pictures*
 17 *Entertainment, Inc.*, C.D. Cal. Case No. 2:14-cv-09600-RGK. He was recently retained by the largest
 18 federal employee union to bring an action arising out of the recent breach of computer systems
 19 maintained by the Office of Personnel Management, *American Federation of Government Employees*,
 20 *AFL-CIO v. Office of Personnel Management*, D.D.C. Case No. 1:15-cv-01015-ABJ. He is familiar
 21 with judicial expectations for managing complex litigation from his past service on the United States
 22 Judicial Conference Advisory Committee on Civil Rules and current service as a member of the
 23 Advisory Council of the Duke Law School Bench-Bar Academy Distinguished Lawyers' Series.
 24 Amanda Steiner has over 15 years of experience representing consumers in class action litigation and is
 25 thoroughly familiar with Ninth Circuit law in consumer and data privacy class actions, having had
 26 primary responsibility for briefing motions to dismiss and motions for class certification in several
 27 pending matters, including the Yahoo! and Sony cases. Girard Gibbs' associates are also well qualified
 28 to assist in this matter, given their experience in cases like Target, Home Depot, Yahoo! and Sony.

1 Pritzker Levine partners Jonathan Levine and Elizabeth Pritzker both have more than 25 years of
 2 litigation experience representing plaintiffs in complex class actions and regularly practice before the
 3 federal courts of this District. Both attorneys have served in leadership positions in numerous privacy
 4 and consumer cases, including *Beringer v. Certegy Check Services, Inc.*, Case No. 8:07-cv-1657-SDM
 5 (M.D. Fla.), *In re Countrywide Financial Corp. Data Security Breach Litigation*, Case No. 3:08-MD-
 6 1988 (W.D. Ky.), *In re Providian Credit Card Cases*, JCCP No. 4085 (Cal. Sup. Ct., San Francisco
 7 County), *In re Adobe Systems Inc. Privacy Litigation*, Case No. 5:13-cv-05226-LHK, *In re Sony BMG
 8 CD Technologies Litigation*, Case No. 1:05-cv-9575-NRB (S.D.N.Y.), and *In re iPod Cases*, JCCP No.
 9 4355 (Cal. Sup. Ct. San Mateo County).

10 While competing counsel are all dedicated and accomplished advocates, no firm or combination
 11 of firms brings the same depth and breadth of experience to this matter as Sterling Plaintiffs' Counsel.
 12 The Saveri firm is unquestionably experienced in antitrust matters but lacks any particular expertise in
 13 consumer and privacy cases. Similarly, the Block Leviton firm is recognized for its expertise in
 14 securities and corporate transactional litigation but appears to have no experience in consumer
 15 protection cases in the technology field, much less in privacy litigation. The Van Laningham Duncan
 16 firm's expertise appears to be in personal injury and air crash litigation.

17 While Robbins Geller is known for its securities litigation practice, the firm's consumer and
 18 privacy experience is at best equal to that of Sterling Plaintiffs' Counsel. Compare Dkt. No. 6-2 at 13-
 19 14, 30-31 (Robins Geller firm resume) with Dkt. Nos. 5-1 at 12-16, 5-2 at 22-26, 5-3 at 10-13 (firm
 20 resumes of Sterling Plaintiffs' Counsel). While the Edelson firm has dedicated its practice to suing
 21 technology companies, the firm lacks the complex case management experience that Sterling Plaintiffs'
 22 Counsel bring to this case, as well as the support of its peers.

23 In contrast, Sterling Plaintiffs' Counsel have decades of experience in federal court litigation,
 24 consumer class actions and practice in this District. They have timely experience in confronting the
 25 project management challenges presented by multi-district privacy litigation and the strategies for
 26 successfully pleading and certifying consumer privacy claims. They have demonstrated that expertise
 27 by coordinating this litigation and they are well positioned to move these proceedings forward in an
 28 efficient and cost effective manner.

1 **D. No Movant Has Done More to Investigate The Case and Advance the Interests of**
 2 **the Class than The Sterling Plaintiffs and Their Counsel**

3 One of the criteria for selection of interim class counsel set forth in both Rule 23(g)(1)(A) and
 4 the Case Management Order is the work done by counsel to identify and investigate potential claims in
 5 the action and to advance the interests of the class. The Sterling Plaintiffs set forth in their motion and
 6 supporting declarations the work done by Cotchett Pitre, Girard Gibbs and Pritzker Levine to investigate
 7 the case and advance the interests of the class. *See* Dkt. Nos. 5 at 4-5 (Memo. of Law); 5-1 at ¶¶ 3-5
 8 (Levine Decl.); 5-2 at ¶ 3 (Girard Decl.); 5-3 at ¶¶ 3-4 (Edling Decl.). Notably, once the actions were
 9 filed all of the work done by these three firms was carried out where possible on a consensus basis and
 10 with the support of the vast majority of the plaintiffs in the litigation.

11 Plaintiff in the *Babbitt* action does not identify any work done by his counsel (the Joseph Saveri
 12 Law Firm and supporting counsel) either to identify or investigate potential claims in the action or to
 13 advance the interests of the class. The Court may presume that *Babbitt*'s counsel have no evidence to
 14 support this criterion, and it unlikely that there is any since the *Babbitt* action was the last of the 27
 15 actions filed, almost two months after the *Sterling* action.

16 Plaintiffs in the *Wood* action point to the preliminary injunction motion and motion to expedite
 17 discovery that they filed while their case was pending in the Eastern District of North Carolina as
 18 evidence of work their counsel (Van Laningham Duncan and Block Leviton) have done to advance the
 19 interests of the class. Both motions were briefed, but never ruled on by the court in North Carolina.³
 20 The Wood Plaintiffs never consulted with any of the other plaintiffs in the litigation before the motions
 21 were filed, and there has been no support for the Wood Plaintiffs' strategy from plaintiffs' counsel when
 22 they learned, after the fact, that the motions had been filed.

23 The Wood Plaintiffs' contention that their motions benefitted anyone is without merit. They
 24 argue that even though the motions were never decided, the class still benefitted from disclosures
 25 Lenovo made in its opposition brief and from a notice Lenovo provided electronically to its customers

26
 27
 28 ³ As a result of the MDL transfer, the motions are now off calendar and may only be noticed by
 further order of this Court. *See* Case Management Order, Dkt. No. 8 at 8.

1 after the preliminary injunction motion was filed. But the disclosures the Wood Plaintiffs point to were
 2 already made elsewhere. For example, the Wood Plaintiffs say Lenovo admitted the original version of
 3 the Superfish program “employed a self-signed root certificate with a private key that was stored on the
 4 device and protected only by a simple password.” *See* Dkt. No. 3-1 at 4 (*Wood Memo. of Law*). That
 5 information was not new; in fact it was alleged in the *Sterling* complaint (and many other complaints as
 6 well) filed weeks earlier. *See* Case No. 5:15-cv-0807, Dkt. No. 1 at ¶¶ 5-6, 32-33 (*Sterling Complaint*).
 7 And Lenovo did not give electronic notice to its customers in response to the preliminary injunction
 8 motion. Lenovo had decided to give the notice in question before the preliminary injunction motion
 9 was filed and the timing is purely coincidental. *See* Dkt. No. 16 at 4 (Lenovo’s Response).

10 The Pick Plaintiffs claim that their counsel (Robbins Geller and Edelson) have done significant
 11 work identifying and investigating potential claims in the action and advancing the interests of the class.
 12 The Pick Plaintiffs assert, without support, that other firms were content to rely on press reports before
 13 filing, but only their counsel “took time to ensure not only that press reports regarding Lenovo and
 14 Superfish’s conduct were accurate, but also to uncover further details substantiating their clients’
 15 allegations that Defendants unlawfully intercepted their communications.” *See* Dkt. No. 6 at 5 (*Pick*
 16 *Memo. of Law*).

17 The first public disclosures that prompted the lawsuits were made on February 19, 2015. The
 18 *Hunter* complaint was filed by Edelson four days later, on February 23, two hours after the *Sterling*
 19 complaint was filed. *Pick* was filed the next day, February 24. The three complaints are substantially
 20 similar and the *Sterling* complaint is not only longer, but more detailed and more comprehensive than
 21 the others. Whatever it is that the Pick Plaintiffs’ counsel did in that four day period, there is no
 22 indication it was superior to what plaintiffs’ counsel in *Sterling* were doing at the same time. Moreover,
 23 the *Estrella* complaint filed by Girard Gibbs on March 5 is substantially more detailed and
 24 comprehensive than any previous complaint, reflecting the firm’s independent research and analysis of
 25 the facts and law. The *JGX* complaint filed by Cotchett Pitre on March 10 is equally detailed and
 26 includes additional factual allegations related to the technology that defendants employed to intercept
 27 internet communications.

1 The Pick Plaintiffs also are incorrect in suggesting that they alone conducted a pre-filing
 2 investigation that went beyond reading press releases. Cotchett Pitre worked with an industry
 3 consultant, Girard Gibbs worked with a forensic computer expert and Pritzker Levine worked with its
 4 client, a computer technology consulting company, to investigate and prepare their respective
 5 complaints. *See* Dkt. Nos. 5 at 4 (Memo. of Law); 5-1 at ¶ 3 (Levine Decl.); 5-2 at ¶ 3 (Girard Decl.); 5-
 6 3 at ¶ 3 (Edling Decl.). This work and other independent pre-filing investigation is reflected in the
 7 complaints filed by the three firms. For example, the complaint filed by Cotchett Pitre identifies exactly
 8 how, when and by what means Superfish adware intercepted consumer information and the resulting
 9 impact on consumers. *See* Case No. 5:15-cv-01113, Dkt. No. 1 at ¶¶ 30-33, 39 (*JGX* Complaint). The
 10 *Estrella* complaint filed by Girard Gibbs traces Lenovo's history of including "bloatware" packages on
 11 its machines, identifies the amount Lenovo was paid to preinstall the Superfish adware on certain of its
 12 PCs, details Superfish's background and its executives' history of questionable judgment in privacy
 13 matters, and provides a detailed explanation of how Superfish's adware works and made plaintiffs'
 14 computers vulnerable to attack. *See* Case No. 3:15-cv-01044, Dkt. No. 1 at ¶¶ 26-27, 32-34, 51-61
 15 (*Estrella* Complaint).

16 The Pick Plaintiffs devote a good deal of their brief to extolling the work done by their counsel
 17 to advance the interests of the class once their complaints were filed. The Pick Plaintiffs focus on three
 18 activities: (1) work done by their counsel to coordinate the actions and advance the litigation for all
 19 plaintiffs; (2) information and discovery exchanged with defendants that benefitted plaintiffs in all of the
 20 actions; and (3) attempting to arrange an early mediation with defendants. These claims are exaggerated
 21 at best and none of these activities meaningfully advanced the interests of the class.

22 With respect to coordinating the litigation, the Pick Plaintiffs say they organized initial
 23 conferences among plaintiffs' counsel to discuss the MDL motion, evidence preservation issues and
 24 discovery protocols, and other methods to advance the litigation. In truth, the Pick Plaintiffs' counsel,
 25 among others, proposed calls to discuss evidence preservation issues and discovery protocols. The Pick
 26 Plaintiffs' counsel never proposed or circulated any work product to any other plaintiffs' firm on either
 27 topic. On the contrary, Pick Plaintiffs' counsel used the calls to advocate for strategies that garnered
 28 scant support, including centralization in the Eastern District of North Carolina as the transferee court

1 before the JPML (supported by only two firms) and a voluntary stay of all of the proceedings. *See* Dkt
 2 No. 6 at 8. When these strategies met with no support from other counsel, the Pick Plaintiffs stopped
 3 participating in group calls.

4 The Sterling Plaintiffs' Counsel continued to communicate regularly with the majority of the
 5 firms to ensure that decisions were made on a consensus basis where possible and that all plaintiffs had
 6 the opportunity to join in any pleadings and stipulations. For example, the Sterling Plaintiffs negotiated
 7 a joint opposition to defendants' motion to stay the proceedings, supported by 12 of the 16 cases then
 8 pending before this Court and 7 of the 10 cases then pending in other judicial districts. *See* Case No.
 9 5:15-cv-0807, Dkt. No. 31 (Joint Opp. To Stay Motion). Ultimately all of the stipulations and motions
 10 to relate cases filed in this District were filed by the Sterling Plaintiffs' Counsel, as was the joint
 11 opposition to the JPML transfer motion and the joint opposition to defendants' motion to stay.

12 The Pick Plaintiffs also point to a meeting with defendants' counsel, during which they claim to
 13 have exchanged information and discovery with and obtained various agreements from defendants.
 14 There are a number of problems with this assertion. Defendants held a single one-hour meeting at the
 15 request of the Pick Plaintiffs' counsel, and "no agreements were reached." Dkt. No. 16 at 4-5 (Lenovo's
 16 Response). The Pick Plaintiffs' counsel never disclosed to any of the other plaintiffs that they had
 17 solicited a meeting with defendants, and if the Pick Plaintiffs did in fact obtain information from
 18 defendants, it was never provided to any other plaintiffs' counsel. Nothing about these side-dealings
 19 advanced the interests of the class.

20 The Pick Plaintiffs also claim their attempt to broker an early mediation advanced the interest of
 21 the class. Sterling Plaintiffs disagree. The approach advocated by the Pick Plaintiffs – negotiation
 22 within a compressed time frame, with competing cases at the table, with no leadership appointment in
 23 place, and without access to formal or informal discovery – has proven unworkable in other cases and is
 24 hardly calculated to elicit the support of other counsel.⁴ The Sterling Plaintiffs' approach of deferring
 25 settlement discussions until leadership has been appointed and an orderly settlement process can take

26 ⁴ Defendants, in moving for a stay, affirmatively sought to avoid any case advancement prior to the
 27 appointment of interim class counsel ("[e]ngaging in discussions related to an ADR process, early
 28 settlement, a case schedule and a discovery plan before the consolidation and transfer of the actions is
 illogical, risks inconsistencies, and inflicts undue and unnecessary burdens on the parties and the
 Court"). *See* Case No. 5:15-cv-0807, Dkt. No. 34 at 1 (Defs.' Reply on Motion to Stay).

1 place under court supervision was and remains the most effective way of streamlining the proceedings,
 2 minimizing unnecessary and costly motion practice, and allowing negotiation to occur without undue
 3 settlement pressure and based on adequate information. *See Manual for Complex Litig.* § 21.11 (4th ed.
 4 2004) (instructing that courts should designate interim lead or class counsel because doing so “clarifies
 5 responsibility for protecting the interests of the class during precertification activities ...such as
 6 negotiating settlement).

7 Accordingly, in their opening papers, the Sterling Plaintiffs proposed a case management plan
 8 that targets discovery of core facts, the goal being “... to get as efficiently on the table as possible the
 9 core information that the parties need in order to value the case sensibly for settlement purposes.” Dkt.
 10 No. 5 at 16 (quoting *Klein v. King*, 132 F.R.D. 525, 529 (N.D. Cal. 1990) (Brazil, Mag. J.)). If the
 11 parties do not negotiate a settlement after core discovery is complete, the case management plan
 12 provides for the scope of discovery to expand in phases, with the parties periodically revisiting whether
 13 settlement is appropriate for the just and efficient resolution of the case. *Id.* at 16-17. The “core
 14 discovery” approach has been successfully employed by the Sterling Plaintiffs’ counsel in other actions
 15 and adopted by respected jurists in this and other districts around the country. *See, e.g.*, Dkt No. 5-3, Ex.
 16 B. Regardless of whether this action is a low damages dispute as Lenovo urges, a phased discovery
 17 approach allows the parties to determine whether a fair and adequate settlement can be negotiated for the
 18 class at an early stage. Lenovo’s interest in cost-containment will be better served by implementing the
 19 measured approach recommended by Sterling Plaintiffs’ counsel than rushing into early settlement
 20 discussions without an adequate record.

21 **E. Sterling Plaintiffs’ Counsel Are Best Qualified to Manage This Litigation In A Cost-
 22 Effective Manner**

23 Cotchett Pitre, Girard Gibbs and Pritzker Levine have worked collaboratively in the past and
 24 demonstrated their ability to work cooperatively and cost effectively “in the trenches.” For example,
 25 Girard Gibbs and Cotchett Pitre jointly represented the California Teachers’ Retirement System in a
 26 sharply disputed “opt-out” securities action that resulted in a \$45 million recovery. *CalSTRS v. Qwest
 27 Communications, et al.* Case No. 415546 (Cal. Sup. Ct., San Francisco County). The two firms also
 28 served as co-lead counsel in a widely followed class action brought on behalf of Apple iPod purchasers.

1 *In re iPod Cases*, JCCP No. 4355 (Cal. Sup. Ct., San Mateo County). Jonathan Levine (who was a
 2 partner of Girard Gibbs from 2003 to 2014) participated in the Qwest litigation and Elizabeth Pritzker
 3 (who was a principal with Cotchett Pitre from 2001 to 2005 and a partner with Girard Gibbs from 2005
 4 to 2013) participated in both the Qwest and iPod actions. Girard Gibbs and Cotchett also worked
 5 cooperatively on behalf of securities investors in the highly complex *In re Lehman Brothers Equity/Debt*
 6 *Securities Litigation*, Case No. 08-civ-5523 (S.D.N.Y. 2008), with Daniel Girard of Girard Gibbs
 7 serving as a member of the Executive Committee and Matthew Edling of Cotchett Pitre serving as
 8 liaison counsel for individual plaintiffs. Girard Gibbs and Pritzker Levine are also currently working
 9 together on the *In re Adobe Systems Inc. Privacy Litigation*, Case No. 5:13-cv-05226-LHK, pending
 10 before Judge Koh. There can be no dispute that the firms have proven their ability to work together and
 11 to successfully manage complex litigation. Additionally, while the Sterling Plaintiffs' Counsel
 12 described in this motion have significant knowledge and experience directly related to the facts of this
 13 case, the firms will assign work among themselves and delegate to junior and mid-level associates as
 14 appropriate so that the litigation is cost effective for the class.

15 Cotchett Pitre, Girard Gibbs, and Pritzker Levine are headquartered in this District. As such, the
 16 three firms, as co-lead counsel, are in a superior position to any other movant or group of movants to
 17 efficiently manage the litigation. These efficiencies will inure to the benefit of the class, which will not
 18 have to pay additional expenses to fly lawyers in for meet and confer sessions, document review
 19 sessions, depositions, meetings and court hearings. Cotchett Pitre, Girard Gibbs, and Pritzker Levine
 20 can manage the litigation without incurring unnecessary travel expenses, expenses that will be borne by
 21 the class if this Court approves a lead counsel that is based outside this District.

22 Lenovo expresses the concern in its Response, that it will face a "plethora of claims" asserted in
 23 the various complaints and expresses the hope that lead counsel will streamline the case when a
 24 consolidated amended complaint is filed. *See* Dkt. No. 16 at 5. Sterling Plaintiffs agree that lead
 25 counsel will need to adopt a common sense, cost-effective approach to pleading the case in light of the
 26 claims at issue and potential recoveries. The Sterling Plaintiffs' Counsel are most suited to that task for
 27 two reasons. First, as discussed above, no other movant has as much experience with and knowledge of
 28 the federal, state and common law consumer and privacy claims as Sterling Plaintiffs' Counsel. Second,

1 because the Sterling Plaintiffs' Counsel have been working cooperatively with most of the plaintiffs and
2 firms that have asserted all of these claims, it will be easier for them to evaluate each claim and decide
3 whether the claim should be pursued in the consolidated amended complaint.

4 **III. CONCLUSION**

5 For all of the foregoing reasons, the Court should deny the motions by the Pick Plaintiffs,
6 Plaintiff Babbitt and the Wood Plaintiffs, and grant the Sterling Plaintiffs' motion to appoint Cotchett
7 Pitre, Girard Gibbs and Pritzker Levine as interim co-lead class counsel.

8
9 Dated: July 7, 2015

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ATTESTATION

I, Jonathan K. Levine, am the ECF user whose ID and password are being used to file this document. In compliance with Local Rule 5-1(i)(3), I hereby attest that all other signatories listed have concurred in this filing.

/s/ Jonathan K. Levine

Jonathan K. Levine